

RECORD OF PROCEEDINGS
PHYSICAL DISABILITY BOARD OF REVIEW

NAME: XXXXXXXXXXXXXXXX
CASE NUMBER: PD1200631
BOARD DATE: 20121130

BRANCH OF SERVICE: ARMY
SEPARATION DATE: 20040123

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was a mobilized National Guard, SGT/E-5 (11B/Infantry), medically separated for chronic neck pain. The CI sustained injury to his neck while preparing to deploy in August 2003. This cervical condition could not be adequately rehabilitated with treatment to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards. He was issued a permanent U3 profile and referred for a Medical Evaluation Board (MEB). Left Achilles tendonitis, identified in the rating chart below, was also identified and forwarded by the MEB as a condition meeting retention standards. The Physical Evaluation Board (PEB) adjudicated the neck condition as unfitting, rated 10%, with application of the Department of Defense Instruction (DoDI) 1332.39. The remaining condition was determined to be not unfitting. The CI made no appeals, and was medically separated with a 10% disability rating.

CI CONTENTION: "Qarmat Ali Exposure COPD/PTSD" was listed on the CIs application. He elaborated no specific contention in his application.

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) "identified but not determined to be unfitting by the PEB." The ratings for unfitting conditions will be reviewed in all cases. The other requested conditions, chronic obstructive pulmonary disease (COPD) and posttraumatic stress disease (PTSD), listed by the CI on his application, are not within the Board's purview and will not be discussed. Any conditions or contention not requested in this application, or otherwise outside the Board's defined scope of review, remain eligible for future consideration by the Army Board for Correction of Military Records.

RATING COMPARISON:

Service IPEB – Dated 20031211			VA (1 Mos. Post-Separation) – All Effective Date 20040124			
Condition	Code	Rating	Condition	Code	Rating	Exam
Neck Pain	5242	10%	Chronic neck injury with pain	5237	20%	20040226
Left Achilles Tendonitis	Not Unfitting		Achilles Tendonitis, Left	5299-5284	10%	20040226
↓No Additional MEB/PEB Entries↓			PTSD	9411	70%	20040226
			DDD w/compression deformities T spine	5243	20%	20040226
			Tinnitus	6260	10%	20040217
			Migraines	8199-8100	10%	20040227
						0% X 2 / Not Service-Connected x 3
Combined: 10%			Combined: 90%			

ANALYSIS SUMMARY: The Disability Evaluation System (DES) is responsible for maintaining a fit and vital fighting force. While the DES considers all of the member's medical conditions, compensation can only be offered for those medical conditions that cut short a member's career, and then only to the degree of severity present at the time of final disposition. The DES has neither the role nor the authority to compensate members for anticipated future severity or potential complications of conditions resulting in medical separation nor for conditions determined to be service-connected by the Department of Veterans Affairs (DVA) but not determined to be unfitting by the PEB. However, the DVA, operating under a different set of laws (Title 38, United States Code), is empowered to compensate all service-connected conditions and to periodically re-evaluate said conditions for the purpose of adjusting the Veteran's disability rating should the degree of impairment vary over time. The Board's role is confined to the review of medical records and all evidence at hand to assess the fairness of PEB rating determinations, compared to VASRD standards, based on severity at the time of separation.

Neck Condition. While conducting training for deployment in March 2003, the CI fell running down a hill sustaining a low energy cervical whiplash injury. He was able to deploy, but was evacuated back to Fort Lewis for further care in August 2003. Routine X-rays of the cervical spine, obtained 12 August 2003, revealed mild to moderate degenerative changes throughout the lower neck. Magnetic resonance imaging (MRI) studies of the cervical spine performed on 15 August 2003, revealed multi-level degenerative changes, mild disc bulges at C3-4 and C5-6 without impingement. There were three range-of-motion (ROM) evaluations in evidence, one goniometric, with documentation of additional ratable criteria, which the Board weighed in arriving at its rating recommendation; as summarized in the chart below.

Cervical ROM in degrees	Ortho Clinic ~5 Mo. Pre-Sep (20030812)	MEB ~2.5 Mo. Pre-Sep (20031105)	VA C&P ~1 Mo. Post-Sep (20040226)
Flexion (45 Normal)	FAROM	Full flexion	45 without pain
Extension (45)	FAROM	Full extension	45 with pain
COMBINED (340)		-	290
Comment	Full active ROM; pain on right rotation and left lateral bending; motor/sensory/reflexes wnl	TTP; painful motion; 5/5 strength; sensation & reflexes wnl; gait wnl	No spasm; pain in trapezius with motion; sensory/ motor/reflexes wnl
§4.71a Rating	10%	10%	10%

An orthopedic clinic evaluation on 12 August 2003, 5 months before separation, full active ROM of the cervical spine was noted. Additional findings from this exam are noted in the chart above. At the MEB/narrative summary (NARSUM) exam performed on 5 November 2003, approximately 2 months before separation, the CI reported persistent neck pain and occasional twinges of pain in right arm occurring spontaneously and lasting only a few seconds. He reported working full time as a manager of an information systems company without difficulty. Findings on physical examination are presented in the chart above. At the VA Compensation and Pension (C&P) exam performed on 26 February 2004, a month after separation, the CI reported neck pain when rotating to his right with occasional radiation to the right arm with numbness and tingling. Findings on physical examination are presented in the chart above. The Board directs attention to its rating recommendation based on the above evidence. The PEB rated the neck condition 10%, using 5242, degenerative arthritis citing normal but painful ROM without spasm. The VA rated the neck condition 20%, using 5237, cervical strain, with apparent application of §4.45. The Board noted the CI to be right hand dominant. The Board unanimously agreed the examinations supported a 10% rating with application of §4.59 or based on limited combined range of motion (C&P exam) under §4.71a ROM. The Board agreed that §4.45 was not applicable, herein, given the absence in the record in evidence of objective quantification on examination of diminution of function with repetition. There was no evidence of ratable peripheral nerve impairment in this case, since no motor weakness was present and

sensory symptoms had no functional implication. There was no evidence of incapacitating episodes for a higher rating under 5243. After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt), the Board concluded that there was insufficient cause to recommend a change in the PEB adjudication for the neck pain condition.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. As discussed above, PEB reliance on DoDI 1332.39 for rating neck pain condition was operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the chronic neck pain condition and IAW VASRD §4.71a, the Board unanimously recommends no change in the PEB adjudication. There were no other conditions within the Board's scope of review for consideration.

RECOMMENDATION: The Board, therefore, recommends that there be no recharacterization of the CI's disability and separation determination, as follows:

UNFITTING CONDITION	VASRD CODE	RATING
Neck Pain	5242	10%
	COMBINED	10%

The following documentary evidence was considered:

- Exhibit A. DD Form 294, dated 20120607, w/atchs
- Exhibit B. Service Treatment Record
- Exhibit C. Department of Veterans' Affairs Treatment Record

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President
Physical Disability Board of Review

SFMR-RB

MEMORANDUM FOR Commander, US Army Physical Disability Agency
(TAPD-ZB /), 2900 Crystal Drive, Suite 300, Arlington, VA 22202-3557

SUBJECT: Department of Defense Physical Disability Board of Review Recommendation
XXXXXXXXXXXXXXXXXXXX, AR20120022050 (PD201200631)

I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I accept the Board's recommendation and hereby deny the individual's application. This decision is final. The individual concerned, counsel (if any), and any Members of Congress who have shown interest in this application have been notified of this decision by mail.

BY ORDER OF THE SECRETARY OF THE ARMY:

Encl

XXXXXXXXXXXXXXXXXXXX
Deputy Assistant Secretary
(Army Review Boards)

CF:
() DoD PDBR
() DVA